

Addition of Provisions Relating to “Sparkling Devices” to the State Uniform Fire Prevention and Building Code

I.D. No. DOS-05-15-00007-E

Filing No. 317

Filing Date: 2015-04-17

Effective Date: 2015-04-17

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Addition of section 1228.3 to Title 19 NYCRR.

Statutory authority: Executive Law, section 377(1)

Finding of necessity for emergency rule: Preservation of public safety.

Specific reasons underlying the finding of necessity: This rule is readopted as an emergency measure to preserve public safety, for the following reasons:

(1) Chapter 477 of the Laws of 2014 amended sections 270.00 and 405.00 of the Penal Law to authorize any city or county outside of New York City to adopt a local law making a certain category of fireworks (viz., “sparkling devices”) legal in such city or county. Chapter 477 of the Laws of 2014 became effective on December 21, 2014, and cities and counties outside New York City are now to free to adopt local laws that legalize sparkling devices.

(2) Prior to the initial emergency adoption of this rule, the State Uniform Fire Prevention and Building Code (the Uniform Code) had no provisions expressly applicable to sparkling devices.

(3) This rule amends the Uniform Code by adding

- (i) requirements applicable to buildings and structures where sparkling devices may be manufactured, stored, sold or used and
- (ii) additional requirements related to the use of sparkling devices intended to reduce the risk of fire in buildings and structures resulting from the use of sparkling devices.

This rule preserves public safety by reducing the risk of deaths, injuries, and Property damage resulting from the use of sparkling devices.

(4) This rule was initially adopted by the State Fire Prevention and Building Code Council (the Code Council) as an emergency measure on January 15, 2015. At its meeting held on January 15, 2015, Code Council determined that adopting this rule on an emergency basis was required to preserve public safety because

- (i) Chapter 477 of the Laws of 2014 authorizes cities and counties outside New York City to legalize sparking devices;
- (ii) it was, therefore, necessary to add provisions to the Uniform Code relating to buildings and structures where sparking devices will be manufactured, stored, sold and/or used; and
- (iii) it was necessary to add such provisions to the Uniform Code as quickly as possible because Chapter 477 of the Laws of 2014 authorizes cities and counties outside New York City to adopt local laws legalize sparking devices at any time after December 21, 2014.

(5) The initial emergency adoption of this rule will expire on April 19, 2015. If the initial emergency adoption of this rule is allowed to expire, the Uniform Code will cease to have any provisions expressly applicable to sparking devices. However, cities and counties outside New York City will continue to be authorized to adopt local laws legalizing sparking devices.

(6) Continuing this rule on an emergency basis is necessary to assure that the provisions of this rule will continue in effect after April 19, 2015 (the date on which the original emergency adoption of this rule otherwise would have expired).

Subject: Addition of provisions relating to “sparking devices” to the State Uniform Fire Prevention and Building Code.

Purpose: The purpose of this rule is to amend the Uniform Code to provide additional requirements applicable to buildings and structures where “sparking devices” are manufactured, stored or used. This rule also adds other restrictions on the use of “sparking devices” intended to minimize the danger of fire in buildings and structures.

Substance of emergency rule: This rule amends the State Uniform Fire Prevention and Building Code (the Uniform Code) by adding a new section 1228.3 to Part 1228 of Title 19 of the NYCRR. The provisions of new section 1228.3 apply to the possession, manufacture, storage, handling, sale, and use of sparking devices. Any building or structure where sparking devices are manufactured, stored, handled, sold or used shall be subject to the provisions of new section 1228.3 and to all other provisions of the Uniform Code applicable to such building or structure.

In this rule, the term “sparking devices” has the meaning ascribed to that term by section 270.00(1)(a)(vi) of the Penal Law (as amended by Chapter 477 of the Laws of 2014), and shall include “ground-based or hand-held devices” and “novelties.”

The provisions of Section 1228.3 are in addition to, and not in limitation of,

- (1) all other provisions of the Uniform Code applicable to any building or structure where sparkling devices are manufactured, stored, handled, sold or used and
- (2) all other statutes, rules, regulations, local laws, and ordinances applicable to the possession, manufacture, storage, handling, sale and/or use of sparkling devices, including but not limited to sections 270.00 and 405.00 of the Penal Law; section 392-j of the General Business Law; section 156-h of the Executive Law; Part 225 of Title 9 of the NYCRR; Part 39 of Title 12 of the NYCRR (Industrial Code Rule 39); and local laws, ordinances or regulations relating to operating permits as contemplated by 19 NYCRR Section 1203.3(g).

Nothing in Section 1228.3 shall be construed as permitting the possession, manufacture, handling, sale and/or use of sparkling devices in violation of any other law, statute, rule, regulation, local law or ordinance applicable to the possession, manufacture, storage, handling, sale and/or use of sparkling devices.

Nothing in Section 1228.3 shall be construed as permitting the possession, manufacture, handling, sale and/or use of sparkling devices in any jurisdiction where the possession, manufacture, handling, sale and/or use of sparking devices has not been made legal in accordance with the provisions of section 405.00 of the Penal Law.

Section 1228.3 prohibits the use of any sparkling device inside any building or structure unless

- (i) such sparkling device is listed for indoor use and
- (ii) (the use of such sparkling device inside such building or structure has been approved.

Section 1228.3 prohibits the use of any sparkling device within 10 feet of any building or structure unless

- (i) such sparkling device is listed for indoor use or for use within 10 feet of a building or structure and
- (ii) the use of such sparkling device within 10 feet of such building or structure has been approved.

Section 1228.3 prohibits constructing retail displays of sparkling devices or offering sparkling devices for sale, upon highways, sidewalks or public property or in a Group A or E occupancy.

Sparkling devices displayed for retail sale shall not be made readily accessible to the public.

A minimum of one pressurized-water portable fire extinguisher complying with section 906 of the 2010 FCNYS shall be located not more than 15 feet (4572 mm) and not less than 10 feet (3048 mm) from each area where sparkling devices are stored or displayed for retail sale.

“No Smoking” signs complying with section 310 of the 2010 FCNYS shall be conspicuously posted in each area where sparkling devices are stored or displayed for retail sale.

The code enforcement official is authorized to limit the quantity of sparkling devices permitted at a given location. In particular, but not by way of limitation, the code enforcement official is authorized to limit the quantity of sparkling devices permitted to be kept or stored at any one- or two-family dwelling, townhouse, or any building or structure containing any Group R occupancy.

No person or entity shall conduct a sparkling device display unless such person or entity shall have designated a person as the person in charge of such sparkling device display. The person in charge of a sparkling device display shall be not less than 21 years of age; shall demonstrate knowledge of all safety precautions related to the storage, handling, and use of sparkling devices; and at the time of such sparkling device display shall not be under the influence of alcohol or drugs that impair sensory or motor skills. Whenever in the opinion of the code enforcement official or the operator a hazardous condition exists, the sparkling device display shall be discontinued immediately until such time as the dangerous situation is corrected.

The code enforcement official is authorized to require any sparkling device display or any other use of sparkling devices to be supervised at any time by the code enforcement official in order to determine compliance with all safety and fire regulations.

Sparkling devices that are being manufactured, stored, handled, stored or used in violation of any provision of Section 1228.3 or in violation of any other applicable provision of the Uniform Code may be removed and disposed of in an appropriate manner, at the expense of the owner of the sparkling devices. In a jurisdiction where the possession of sparkling devices has been made legal in accordance with the provisions of section 405.00 of the Penal Law, the code enforcement official is authorized to remove and dispose of the sparkling devices. In other jurisdictions, the sparkling devices shall be removed and disposed of by a police officer, peace officer, or other person authorized by law to do so.

Accidents involving the use of sparkling devices that result in death, personal injury or property damage shall be reported to the code enforcement official immediately.

Manufacturers of sparkling devices shall maintain records of chemicals, chemical compounds and mixtures required by the U.S. Department of Labor regulations set forth in 29 CFR Part 1910.1200 and Section 407 of the 2010 FCNYS.

The manufacture, assembly, and testing of sparking devices, and facilities where the manufacture, assembly and/or testing of sparking devices occur, shall comply with the requirements of this subdivision and NFPA 495 or NFPA 1124. Emergency plans, emergency drills, employee training and hazard communication shall conform to the provisions of new section and Sections 404, 405, 406 and 407 of the 2010 FCNYS.

Detailed Hazardous Materials Management Plans (HMMP) and Hazardous Materials Inventory Statements (HMIS) complying with the requirements of Section 407 of the 2010 FCNYS shall be prepared and submitted to the local emergency planning committee, the code enforcement official, and the local fire department. A copy of the required HMMP and HMIS shall be maintained on site and furnished to the code enforcement official on request. Workers who handle or dispose of sparking devices shall be trained in the hazards of the materials and processes in which they are to be engaged and with the safety rules governing such materials and processes. Approved emergency procedures shall be formulated for each facility where sparking devices are manufactured, assembled and/or tested. Such procedures shall include personal instruction in any emergency that may be anticipated. All personnel shall be made aware of an emergency warning signal.

Whenever in the opinion of the code enforcement official or the operator a hazardous condition exists, the use of sparking devices shall be discontinued immediately until such time as the dangerous situation is corrected.

The storage or temporary storage of sparking devices shall comply with the applicable requirements of NFPA 1124 and, in addition, shall be subject to the provisions of subdivision (f) of new section 1228.3.